

BOARD OF APPEALS CASE NO. 5269

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BEFORE THE

APPLICANTS: Stephen & Julia Stran

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ZONING HEARING EXAMINER

**REQUEST: Expansion of a non-conforming use,
variance to reduce parking spaces and allow an
institutional use within the required side yard
setback; 423 Edgewood Road, Edgewood**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 7/24/02 & 7/31/02

HEARING DATE: August 26, 2002

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Record: 7/26/02 & 8/2/02

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Stephen W. and Julia E. Stran, are requesting an expansion of a non-conforming building, pursuant to Section 267-21 of the Harford County Code; a variance to allow the expansion to be more than 50% of the size of the existing building pursuant to Section 267-21B (as amended by Applicant during the hearing before the Hearing Examiner); an interpretation pursuant to Section 267-41.3F(2), that parking, as proposed, is to the rear of the building or, in the alternative, a variance pursuant to Section 267-25D for a reduction in the number of parking spaces (32 required, 23 requested); and a variance pursuant to Section 267-39B, Table XI, to allow an institutional use with less than the required 20 foot side yard setback or a retail/service use with less than the required 5 feet (4 feet existing) in a B2/Community Business District.

The subject parcel is located at 423 Edgewood Road at the intersection of Willoughby Beach Road, and is more particularly identified on Tax Map 66, Grid 3A, Parcel 382 and 390. The parcel consists of 25,596 square feet, is zoned B2, and is entirely within the First Election District.

Mr. Stephen Stran, the Applicant, Mr. Rowan Glidden, an expert landscape architect, and Mr. Anthony McClune, of the Department of Planning and Zoning, appeared and testified in the matter. There was no opposition to the request and the Department of Planning and Zoning recommends approval of the variance requests and the request to allow expansion of a non-conforming building.

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The facts are not disputed and can be summarized as follows:

The property is located at the intersection of Edgewood Road and Willoughby Beach Road and was formerly used by a 7-11 retail operation. The 7-11 store has since moved and the owner plans to utilize the existing 2,925 square foot building and add to it an 1,800 square foot addition. The Catholic Church has expressed an interest in renting the entire space for a Head Start program. The building is located on this corner lot and in order to meet the setback requirements of the Code, would need to be torn down and replaced, an unwarranted economic hardship according to all of the witnesses, particularly since the 7-11 store existed at that location for many years without adverse consequences resulting from the reduced setbacks. Because of the configuration of the property the parking lot is located from Edgewood road back to the rear property line and running the length of the existing and enlarged proposed structure. The entire project will be the first undertaken as part of the Edgewood Overlay District and associated revitalization of the downtown Edgewood area. There is no possibility of providing parking along the Willoughby Beach side of the property because of its elevation above the road grade. There has been erected a retaining wall along that property boundary. Additionally, reconfiguring the parking lot from that proposed will require relocating the entrance. Interestingly, if the entrance were located along Willoughby Beach Road, the parking area would be considered in the rear, and using mitigation allowed by the Code, 23 spaces would be all that is required, the precise number being requested. All of the witnesses testified that relocating the entrance along Willoughby Beach Road would create an unsafe condition not desirable at this location. Mr. Glidden stated, and the Department agreed, that 23 spaces were adequate for the business and consistent with the “old town” business district contemplated by the Edgewood Overlay District. In fact, as the first construction pursuant to that initiative, each of the witnesses agreed that this use will set the standard for future uses.

CONCLUSION:

The Applicants, Stephen W. and Julia E. Stran, are requesting an expansion of a non-conforming building, pursuant to Section 267-21 of the Harford County Code; a variance to allow the expansion to be more than 50% of the size of the existing building pursuant to Section 267-21B (as amended by Applicant during the hearing before the Hearing Examiner); an interpretation pursuant to Section 267-41.3F(2), that parking, as proposed, is to the rear of the building or, in the alternative, a variance pursuant to Section 267-25D for a reduction in the number of parking spaces (32 required, 23 requested); and a variance pursuant to Section 267-39B, Table XI, to allow an institutional use with less than the required 20 foot side yard setback or a retail/service use with less than the required 5 feet (4 feet existing) in a B2/Community Business District.

The following Code Sections are applicable to this request:

Section 267-21

“Enlargement or extension of nonconforming buildings, structures or uses.

The Board may authorize the extension or enlargement of a nonconforming use, with or without conditions, provided that:

- A. The proposed extension or enlargement does not change to a less-restricted and more-intense use.
- B. The enlargement or extension does not exceed fifty percent (50%) of the gross square footage in use at the time of the creation of the nonconformity.
- C. The enlargement or extension does not violate the height or coverage regulations for the district.
- D. The enlargement or extension would not adversely affect adjacent properties, traffic patterns or the surrounding neighborhood.
- E. The limitations, guides and standards set forth in § 267-9I, Limitations, guides and standards, are considered by the Board.”

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Section 267-41.3F(2)

“Edgewood Neighborhood Overlay District.

- F. Parking standard modifications. Parking standards shall not be reduced by more than 30% of the required number of spaces. The off-street parking requirements for any given use shall be established per Section 267-25D of the Harford County Code. The Department of Planning and Zoning, with concurrence from the Department of Public Works, may authorize a modification of the parking space requirements:**

- (2) If parking is located in the rear, the parking standards may be reduced up to 10%.”**

Section 267-25D

“Off-street parking and loading.

- D. Applicability. This district includes all land situated between Maryland Route 152 and Otter Point Creek, north of the Aberdeen Proving Ground and south of the U.S. Route 40 Commercial Revitalization District, as defined in Section 267-41.2.”**

Additionally, Section 267- 39B, Table XI, requires a 5 foot side yard setback.

Harford County Code Section 267-11 permits variances and provides:

"Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.**
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”**

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The Hearing Examiner finds no evidence that would rebut the facts recited by the witnesses or their conclusions. The subject property has unique topographical features that constrain available parking uses. This is an existing building and it is unreasonable and would result in material and substantial hardship if the variances as to setback were not approved, thus resulting in the necessity to remove the existing building before any business use could be made of this B2 zoned parcel. It is true that the parking spaces are significantly less than the required number but are not less than the same use at the same location if the entrance were moved around the corner to Willoughby Beach Road. That would result in an unsafe condition and an unwarranted hardship. It is obvious to the Hearing Examiner that such a use in this district only requires 23 spaces as that number is allowed by the Code. The proposed number of spaces results because of the unique conditions of this property. Allowing this variance creates no impairment of the purpose of the Code and actually results in a safer design. All of the witness discussed the “Limitations, Guides and Standards” of Code Section 267-9I and the Hearing Examiner has considered, in his opinion, any impacts related to those Code provisions and finds that no adverse impacts will result from the addition or uses proposed, the number of parking spaces proposed or the setbacks proposed. The Hearing Examiner finds no need to render an interpretation regarding the parking area’s rear yard location.

For the foregoing reasons, the Hearing Examiner recommends approval of the requests, subject to the following conditions:

1. A site plan shall be submitted for review and approval through the Department of Planning and Zoning
2. A detailed landscaping plan shall be submitted to the Department of Planning and Zoning for review and approval.
3. The Applicant shall obtain any and all necessary permits and inspections.
4. The Applicant shall meet all other requirements of Section 267-41.3 of the Harford County Code.

Date: SEPTEMBER 19, 2002

William F. Casey
Zoning Hearing Examiner